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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2014-0086]

RIN 0579-AE07

Importation of Fresh Peppers from Ecuador Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation of fresh peppers into the United States from Ecuador. As a condition of entry, the fruit would have to be produced in accordance with a systems approach that would include requirements for fruit fly trapping, pre-harvest inspections, production sites, and packinghouse procedures designed to exclude quarantine pests. The fruit would also be required to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization of Ecuador stating that the consignment was produced and prepared for export in accordance with the requirements in the systems approach. This action would allow for the importation of fresh peppers from Ecuador while continuing to provide protection against the introduction of plant pests into the United States.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0086>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2014-0086, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0086> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, Regulations, Permits and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2352; Claudia.Ferguson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart–Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-71, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States. The regulations currently do not authorize the importation of fresh peppers from Ecuador.

The national plant protection organization (NPPO) of Ecuador has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations in order to allow the common bell pepper (Capsicum annuum L.), locoto pepper (Capsicum baccatum L.), habanero pepper (Capsicum chinense Jacq.), tabasco pepper (Capsicum frutescens L.), and manzano pepper (Capsicum pubescens Ruiz & Pav.) to be imported into the United States. (Hereafter we refer to these species as “peppers.”)

As part of our evaluation of Ecuador’s request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Copies of the PRA and the RMD may be obtained from the person listed under FOR FURTHER INFORMATION CONTACT or viewed on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

The PRA, titled “Importation of Fresh Pepper Fruit – Capsicum annuum L., Capsicum baccatum L., Capsicum chinense Jacq., Capsicum frutescens L., and Capsicum pubescens Ruiz & Pav. – from Ecuador into the United States (January 2013),” evaluates the risks associated with the importation of fresh peppers from Ecuador into the United States. The RMD relies upon the findings of the PRA to determine the phytosanitary measures necessary to ensure the safe importation into the United States of fresh peppers from Ecuador.

The PRA identifies eight quarantine pests present in Ecuador that could be introduced into the United States through the importation of fresh peppers:

- Anastrepha fraterculus (Wiedemann), South American fruit fly.
- Ceratitis capitata (Wiedemann), Mediterranean fruit fly.
- Neoleucinodes elegantalis (Guenée), a fruit-boring moth.

- Puccinia pampeana Speg., a pathogenic fungus that causes pepper and green pepper rust.
- Spodoptera litura (Fabricius), a leaf-eating moth.
- Thrips palmi Karny, an arthropod.
- Tuta absoluta (Meyrick) Povolny, South American tomato moth.
- Andean potato mottle virus.

A quarantine pest is defined in § 319.56-2 of the regulations as a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. Plant pest risk potentials associated with the importation of fresh peppers from Ecuador into the United States were determined by estimating the consequences and likelihood of introduction of each quarantine pest into the United States and ranking the risk potential as high, medium, or low. The PRA rated six of the pests as having a high pest risk potential for following the pathway of peppers from Ecuador into the United States: The insects Anastrepha fraterculus, Ceratitis capitata, Spodoptera litura, Thrips palmi, and Tuta absoluta and the fungus Puccinia pampeana. The PRA rated the insect Neoleucinodes elegantalis and the Andean potato mottle virus with a medium pest risk potential.

APHIS has determined that measures beyond standard port of arrival inspection are required to mitigate the risks posed by these plant pests. Therefore, we are proposing to allow the importation of fresh peppers with stems from Ecuador into the United States produced under a systems approach. The RMD prepared for fresh peppers from Ecuador identifies a systems approach of specific mitigation measures against the quarantine pests identified in the PRA and concludes that those measures, along with the general requirements for the importation of fruits and vegetables in the regulations, will be sufficient to prevent the introduction of those pests into

the United States. Therefore, we are proposing to add the systems approach to the regulations in a new § 319.56-73. The proposed measures are described below.

General Requirements

Paragraph (a) of proposed § 319.56-73 would require the NPPO of Ecuador to provide an operational workplan to APHIS that details the activities that the NPPO would, subject to APHIS' approval of the workplan, carry out to meet the requirements of proposed § 319.56-73. An operational workplan is an agreement developed between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities, that specifies in detail the phytosanitary measures that will be carried out to comply with our regulations governing the importation of a specific commodity. Operational workplans apply only to the signatory parties and establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Operational workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of a systems approach typically requires an operational workplan to be developed.

Paragraph (b) of proposed § 319.56-73 would require fresh peppers from Ecuador to be imported in commercial consignments only. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control.

Production Site Requirements

Paragraph (c)(1) of proposed § 319.56-73 would require that the peppers be grown in a pest-free, pest-exclusionary greenhouse or similar structure approved by and registered with the NPPO of Ecuador. Pest-free production sites have been used successfully to prevent infestation by C. capitata and other quarantine pests for peppers of the species Capsicum annuum, Capsicum baccatum, Capsicum chinense, and Capsicum frutescens in Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua since 2005. No pests of quarantine significance have been intercepted by APHIS on fresh peppers grown in such structures and imported into the United States from these regions. The pest-exclusionary structures would have to be equipped with double self-closing doors to prevent inadvertent introduction of pests. In addition, any windows, vents, or openings in the pest-exclusionary structures (other than the double self-closing doors) would have to be covered with 1.6 mm screening (or less) in order to prevent the entry of pests. The 1.6 mm screening size is adequate to exclude A. fraterculus, C. capitata, N. elegantalis, S. litura, and T. absoluta, as these pests are relatively large.

Paragraph (c)(2) of proposed § 319.56-73 would require that all production sites participating in the fresh pepper export program be registered with the NPPO of Ecuador. Such registration would facilitate traceback of a consignment of peppers to the production site in the event that quarantine pests were discovered in the consignment at the port of first arrival into the United States. APHIS would reserve the right to conduct audits and inspect the production sites as necessary.

Paragraph (c)(3) of proposed § 319.56-73 would require the production sites to be inspected prior to harvest by the NPPO of Ecuador or its approved designee¹ in accordance with the operational workplan. If, during these inspections, T. palmi, the Lepidoptera N. elegantalis, S. litura, T. absoluta, P. pampeana, the Andean potato mottle virus, or other quarantine pests are found to be generally infesting or infecting the production site, the NPPO of Ecuador would immediately prohibit that production site from exporting peppers to the United States and notify APHIS of the action. The prohibition would remain in effect until the NPPO of Ecuador and APHIS agree that the pest risk has been mitigated.

Paragraph (c)(4) of proposed § 319.56-73 would require trapping for the fruit flies A. fraterculus and C. capitata at each production site in accordance with the operational workplan.

Paragraph (c)(5) would state that, if a single A. fraterculus or C. capitata is detected inside a registered production site or in a consignment, the NPPO of Ecuador would immediately prohibit that production site from exporting peppers to the United States and notify APHIS of the action. The prohibition would remain in effect until the NPPO of Ecuador and APHIS agree that the risk has been mitigated.

To ensure that the trapping is being properly conducted, paragraph (c)(6) would state that the NPPO of Ecuador would have to maintain records of trap placement, trap checks, and any quarantine pest captures in accordance with the operational workplan. Trapping records would have to be maintained for APHIS' review for at least 1 year.

¹ An approved designee is an entity with which the NPPO creates a formal agreement that allows that entity to certify that the appropriate procedures have been followed. The approved designee can be a contracted entity, a coalition of growers, or the growers themselves.

Paragraph (c)(7) would state that the NPPO of Ecuador would have to maintain a quality control program, approved by APHIS, to monitor or audit the trapping program in accordance with the operational workplan.

Packinghouse Requirements

We are proposing several requirements for packinghouse activities, which would be contained in paragraph (d) of proposed § 319.56-73.

Paragraph (d)(1) would require that fresh peppers be packed in a packinghouse registered with the NPPO of Ecuador. Such registration would facilitate traceback of a consignment of peppers to the packinghouse in which it was packed in the event that quarantine pests were discovered in the consignment at the port of first arrival into the United States.

Paragraph (d)(2) would require that the peppers be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The peppers would have to be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. The peppers would be required to be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards would have to remain intact until arrival in the United States or the consignment would be denied entry.

Paragraph (d)(3) of proposed § 319.56-73 would require that during the time that the packinghouse is in use for exporting fresh peppers to the United States, the packinghouse would only be allowed to accept peppers from registered production sites. This requirement would prevent such peppers intended for export to the United States from being exposed to or otherwise mixed with peppers that are not produced according to the requirements of the systems approach.

Phytosanitary Certificate

To certify that fresh peppers from Ecuador have been grown and packed in accordance with the requirements of proposed § 319.56-73, proposed paragraph (e) would require each consignment of peppers to be accompanied by a phytosanitary certificate issued by the NPPO of Ecuador bearing the additional declaration that the consignment was produced and prepared for export in accordance with the requirements of § 319.56-73. The shipping box would have to be labeled with the identity of the production site.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

The proposed rule would amend the regulations to allow the importation of fresh peppers from Ecuador into the United States when a systems approach to pest risk mitigation is used to prevent the introduction of quarantine pests. The systems approach would integrate prescribed mitigation measures that cumulatively achieve the appropriate level of phytosanitary protection.

The most recent production data available show that fresh pepper yields in Ecuador have expanded from approximately 12,522 pounds per hectare (pounds/ha) in 1996 to approximately 66,361 pounds/ha in 2006. The total quantity of fresh peppers that were exported from

Ecuador in 2006 and 2007 was 96.3 metric tons (MT) and 206.5 MT, respectively. Sea shipping containers that are 40 feet in length hold approximately 20 U.S MT. Considering the total volume exported from Ecuador during these years, APHIS estimates imports of no more than 10 containers (200 MT) of fresh peppers from Ecuador into the United States annually. This quantity is equivalent to less than 0.02 percent of annual U.S. fresh pepper production. Similarly, the estimated quantity of fresh pepper imports from Ecuador (200 MT annually) is minimal compared to the total quantity of fresh peppers imported by the United States in recent years (800,000 MT annually).

In the United States, the average value of bell pepper production per farm in 2012 was approximately \$52,300, and the average value of chili pepper production per farm was approximately \$20,700. Both levels are well below the small-entity standard of \$750,000. Establishments classified within NAICS 111219, including pepper farms, are considered small by the Small Business Administration (SBA) if annual sales are not more than \$750,000. Accordingly, pepper growers are predominantly small entities according to the SBA standard.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow fresh peppers to be imported into the United States from Ecuador. If this proposed rule is adopted, State and local laws and regulations regarding fresh peppers imported under this rule would be preempted while the fruit is in foreign commerce. Fresh vegetables are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question

of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2014-0086. Please send a copy of your comments to: (1) APHIS, using one of the methods described under ADDRESSES at the beginning of this document, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

APHIS is proposing to amend the fruits and vegetables regulations to allow the importation of fresh peppers into the United States from Ecuador. As a condition of entry, the fruit would have to be produced in accordance with a systems approach that would include requirements for fruit fly trapping, inspections, production sites, a quality control program, and packinghouse procedures designed to exclude quarantine pests. The fruit would also be required to be imported in commercial consignments and be accompanied by a phytosanitary certificate issued by the NPPO of Ecuador stating that the consignment was produced and prepared for export in accordance with the requirements of § 319.56-73.

This action would allow for the importation of fresh peppers from Ecuador while continuing to provide protection against the introduction of plant pests into the United States.

Allowing the importation of fresh peppers into the United States from Ecuador will require an operational workplan, registered production sites, trapping records, quality control program, packinghouse registrations, box labeling, and phytosanitary certificates.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .007 hours per response.

Respondents: NPPO, producers, exporters.

Estimated number of respondents: 802.

Estimated number of responses per respondent: 251.45.

Estimated annual number of responses: 201,669.

Estimated total annual burden on respondents: 1,486 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

Copies of this information collection can be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450 and 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56-73 is added to read as follows:

§ 319.56-73 Peppers From Ecuador.

Fresh peppers (Capsicum annum L., Capsicum baccatum L., Capsicum chinense Jacq., Capsicum frutescens L., and Capsicum pubescens Ruiz & Pav.) from Ecuador may be imported into the United States only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: Andean potato mottle virus; Anastrepha fraterculus (Wiedemann), South American fruit fly; Ceratitis capitata (Wiedemann), Mediterranean fruit fly; Neoleucinodes elegantalis (Guenée), a fruit boring moth; Puccinia pampeana Speg., a pathogenic fungus that causes pepper and green pepper rust Spodoptera litura (Fabricius), a leaf-eating moth; Thrips palmi Karny, an arthropod; and Tuta absoluta (Meyrick) Povolny, South American tomato moth.

(a) General requirements. The national plant protection organization (NPPO) of Ecuador must provide an operational workplan to APHIS that details activities that the NPPO of Ecuador will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The operational workplan must include and describe the specific requirements as set forth in this section.

(b) Commercial consignments. Peppers from Ecuador may be imported in commercial consignments only.

(c) Production site requirements. (1) Pepper production sites must consist of pest-exclusionary structures, which must have double self-closing doors and have all other windows, openings, and vents covered with 1.6 mm (or less) screening.

(2) All production sites that participate in the pepper export program must be registered with the NPPO of Ecuador.

(3) The production sites must be inspected prior to each harvest by the NPPO of Ecuador or its approved designee in accordance with the operational workplan. If any quarantine pests are found to be generally infesting or infecting the production site, the NPPO of Ecuador will immediately prohibit that production site from exporting peppers to the United States and notify APHIS of this action. The prohibition will remain in effect until the NPPO of Ecuador and APHIS agree that the pest risk has been mitigated. If a designee conducts the program, the designation must be detailed in the operational workplan. The approved designee can be a contracted entity, a coalition of growers, or the growers themselves.

(4) The registered production sites must conduct trapping for the fruit flies A. fraterculus and C. capitata at each production site in accordance with the operational workplan.

(5) If a single A. fraterculus or C. capitata is detected inside a registered production site or in a consignment, the NPPO of Ecuador must immediately prohibit that production site from exporting peppers to the United States and notify APHIS of the action. The prohibition will remain in effect until the NPPO of Ecuador and APHIS agree that the risk has been mitigated.

(6) The NPPO of Ecuador must maintain records of trap placement, checking of traps, and any quarantine pest captures in accordance with the operational workplan. Trapping records must be maintained for APHIS review for at least 1 year.

(7) The NPPO of Ecuador must maintain a quality control program, approved by APHIS, to monitor or audit the trapping program in accordance with the operational workplan.

(d) Packinghouse procedures. (1) All packinghouses that participate in the export program must be registered with the NPPO of Ecuador.

(2) The peppers must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. The peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit into the United States. These safeguards must remain intact until arrival in the United States or the consignment will be denied entry into the United States.

(3) During the time the packinghouse is in use for exporting peppers to the United States, the packinghouse may only accept peppers from registered approved production sites.

(e) Phytosanitary certificate. Each consignment of peppers must be accompanied by a phytosanitary certificate issued by the NPPO of Ecuador bearing the additional declaration that the consignment was produced and prepared for export in accordance with the requirements of § 319.56-73. The shipping box must be labeled with the identity of the production site.

Done in Washington, DC, this 20th day of April 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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